

SEP 21 2001



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In re Application of
SCHEFFLER et al.
Serial No.: 09/806,603
PCT No.: PCT/DE99/02938
Int. Filing Date: 15 September 1999
Priority Date: 30 September 1998
Attorney's Docket No.: 55618
For: CIRCUIT FOR FRAME RATE CONVERSION

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DECISION ON
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PETITION
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UNDER 37 CFR 1.10(d)
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This decision is in response to "PETITION TO CORRECT CORRESPONDENCE FILING DATE FOR 'DATE-IN' INCORRECTLY ENTERED OR OMITTED ON EXPRESS MAIL LABEL (37 CFR§1.10(d))" filed 25 May 2001 requesting that the above-identified application be accorded a filing date for national stage papers of 30 March 2001, the date petitioner avers that the application was deposited via "Express Mail" pursuant to 37 CFR 1.10.

BACKGROUND

On 15 September 1999, applicant filed international application No. PCT/DE99/02938, which claimed a priority date of 30 September 1998 and which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 06 April 2000.

On 27 March 2000, a Demand was filed with the International Preliminary Examining Authority electing the United States. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or on 30 March 2002.

Applicant filed a transmittal letter for entry into the national stage in the United States accompanied by, *inter alia*, a copy of the international application, and English translation thereof and the basic national fee, which the United States Designated/Elected Office (DO/EO/US) accorded a filing date of 02 April 2001.

On 02 May 2001, a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration executed by the inventors and the \$130 surcharge for filing the oath or declaration after the thirty month period is required.

DISCUSSION

The original "Express Mail" mailing label No. "EL835032473US" is located in the application file and bears the entry 02 April 2001 in the "Date-In" box on the label. It also bears a PTO Mail Center date stamp of "APR 02 2001".

37 CFR 1.10(d) provides as follows:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in § 10.1(r) of this chapter.

Petitioner has satisfied item (1) above as the petition is considered promptly filed. Item (2) above is satisfied since the number of the "Express Mail" mailing label "EL835032473US" was placed the transmittal letter prior to the original mailing by "Express Mail".

With regard item (3), applicant submitted the declaration of Deanna Rivernider, legal assistant to the attorney of record along with a copy of the Express Mail logbook prepared by Ms. Rivernider for the dates 29 March and 30 March 2001. The logbook entry for 30 March 2001 provides the date (3/30/01), time (2:10 p.m.), attorney docket number (55618), Express mail label no. (EL835032473US), location of post office (Marlboro Post Office), initials of legal assistant (DMR), date entered (3/30/01), time (2:30 p.m.) and last pick up (5:30 p.m.)

In her declaration, Ms. Rivernider explains that on March 30, 2001, at approximately 2:10 p.m., she deposited the above referenced application with the U.S. Post Office located at 20 Florence Street, Marlborough, Massachusetts as an Express Mail Delivery addressed to the Box Patent Application-PCT. Ms. Rivernider further indicates that she attached an accurate copy of the Express Mail log that she maintains. She states that "[t]he logbook page indicates that the above-identified application was deposited with the Marlborough Post Office on March 30, 2001 at 2:10 p.m. I returned to the office at approximately 2:20 p.m. and entered the information into my logbook at 2:30 p.m. before leaving the office ...".

The daily log submitted contains: (1) the "Express Mail" number; (2) the place, date and time of deposit; (3) the time of the last scheduled pick-up for that date and place of deposit; (4) the depositor's initials or signature; and (5) the date and time of entry in the log. The evidence came into being after deposit and within one business day after the deposit of the correspondence as "Express Mail". Thus, the evidence provided is sufficient to establish that the correspondence

was deposited with the USPS on 30 March 2001. *See* MPEP 513, p.500-47 (Rev.1, Feb 2000).

Accordingly, it is appropriate, on the present record, to accord the application a corrected filing date of 30 March 2001.

CONCLUSION

Applicant's petition under 37 CFR 1.10(d), requesting that the national stage application papers be accorded a filing date of 30 March 2001 is **GRANTED**.

The application will be forwarded to the United States Designated/Elected Office for further processing in accord with this decision.



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